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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 19 1997

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate)	RM-7297
Spectrum at 2 GHz for Use)	PP-28
by the Mobile-Satellite Service)	

Opposition To Petition for Partial Reconsideration of the MSS Coalition

AT&T Wireless Services, Inc. ("AWS"), by its attorneys, hereby submits its "Opposition to Petition for Partial Reconsideration of the MSS Coalition" (hereinafter "Opposition") in the above-captioned matter.¹ In support thereof, AWS states as follows:

In its "Petition for Partial Reconsideration" (hereinafter "Petition"), the MSS Coalition² requested that the Commission reconsider two aspects of the Commission's Order. Specifically, the MSS Coalition requested that the Commission reconsider (1) its decision to provide Broadcast Auxiliary Service ("BAS") licensees with more than the 85 MHz of spectrum at 2025-2110 MHz and (2) its decision to require MSS operators to reimburse incumbent Fixed Service ("FS") and BAS licensees for their relocation expenses. For the reasons set forth below, AWS opposes that portion of the Petition

¹ *Amendment of Section 2.106 of the Commission's Rules To Allocate Spectrum at 2 GHz For Use By The Mobile-Satellite Service, First Report and Order and Further Notice of Proposed Rule Making*, ET Docket No. 95-18, FCC 97-93, __ Rcd __ (March 14, 1997) (hereinafter "Order").

² Members of the MSS Coalition are Celsat America, Inc., COMSAT Corporation, Hughes Space and Communications International, ICO Global Communications and Personal Communications Satellite Corporation.

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which seeks to reverse the Commission's decision to require MSS operators to pay relocation expenses for FS licensees.

Through affiliates, AWS is licensed to provide broadband PCS service on A, B, D and E blocks of spectrum. As such it is required to negotiate with and relocate microwave incumbents in order to operate on various PCS spectrum blocks on which it is licensed.

AWS operates FS microwave links in conjunction with its cellular telephone systems using frequencies which have to be cleared by Emerging Technology Band licensees. Thus, AWS submits its opposition having the unique perspective of being required (1) to pay the relocation costs of incumbent microwave licensees who operate in the PCS spectrum band and (2) to move its own microwave links to accommodate Emerging Technology Band licensees.

The MSS Coalition postulates 4 primary themes for the proposition that MSS operators should not be required to pay relocation costs for FS licensees who are forced to move to new spectrum: (1) the PCS relocation model on which the MSS relocation scheme was based is not appropriate; (2) the excessive costs required for MSS operators to relocate FS and BAS licensees may undermine the development and ultimate deployment of MSS; (3) the obligation to compensate FS licensees could undermine good faith negotiations between MSS operators and FS licensees to develop technical solutions to sharing of spectrum; and (4) the relocation scheme adopted by the Commission discriminates against domestic MSS licensees and is contrary to the establishment of competitive international MSS systems. None of the arguments asserted by the MSS Coalition is sufficient to warrant Commission reconsideration of the basic premise that

MSS operators should pay the relocation costs of FS licensees required to move their facilities to other spectrum bands.

PCS Relocation Model. The arguments made by the MSS Coalition that the PCS relocation model is not appropriate are misplaced. MSS is likely to be competitive with broadband PCS and other CMRS services.³ Despite the fact that AWS believes the PCS relocation scheme should be modified slightly⁴ to make it a more efficient process, the PCS relocation model is appropriate for MSS for a variety of reasons. First, the failure of the Commission to require MSS operators to pay relocation costs of FS licensees would be tantamount to unfair discrimination against competing PCS licensees who have such an obligation. Second, there was no evidence adduced in this proceeding which justifies disparate treatment of MSS operators and PCS licensees both of whom use, or will use, spectrum made available in the Commission's *Emerging Technologies* decisions.⁵

Cost Issues. The MSS Coalition claims that the requirement to relocate BAS and FS operators "...imposes a huge and perhaps insurmountable burden upon 2 GHz MSS operators"⁶ which calls into question the viability of the service. Notwithstanding the fact that relocation costs are indeed significant, that in and of itself is not an appropriate reason

³ The MSS Coalition stated that "...the Commission properly recognized... MSS ...promises communications to rural and remote underserved areas that are less feasible for coverage by Personal Communications Services ("PCS"), cellular and other mobile services." Petition at p. 2. Once the MSS infrastructure is in place to provide service to rural and remote areas there is no incremental cost for MSS operators to provide service to more populated areas in direct competition with PCS, cellular and other CMRS licensees.

⁴ In various proceedings relating to microwave relocation in the PCS context, AWS has taken the position that the Commission should modify the voluntary and mandatory negotiation periods as well as clarifying certain other aspects of the relocation process.

⁵ See generally, ET Docket No. 92-9.

⁶ *Id.*, p. 24.

to eliminate the rule which requires MSS operators to compensate FS licensees to the extent they are required to relocate to new spectrum. Licensees (including PCS, MSS and others) are faced with a variety of "new" costs of doing business today as a result of the regulatory paradigm of the 1990s. The cost of relocation of incumbent microwave licensees in the Emerging Technologies Band, like costs of acquiring licenses through the use of competitive bidding techniques, is simply another cost of doing business. The MSS Coalition has not justified its conclusion that relocation costs may provide an insurmountable burden on the MSS industry. Absent compelling facts which prove its assertion, the Commission should not grant reconsideration on that basis.

In addition, members of the MSS Coalition can not claim they were unaware of these costs. The issue was not raised for the first time in the 2 GHz MSS Order. Rather, it was first raised in the Emerging Technologies proceeding. In the *First Report and Order and Third Notice of Proposed Rulemaking* in ET Docket No. 92-9, the Commission stated:

We continue to believe that the public interest will be served best by making spectrum in the 2 GHz band available for emerging technologies. There is an immediate need for additional spectrum to sustain the growth of services made possible through new technologies. As indicated in the Notice, we now have pending requests for approximately 400 MHz of spectrum for new services that include PCS, data PCS, MSS and low-Earth orbit satellites. These services are expected to provide the public with enhanced personal access to communications services and to enable businesses to realize increases in productivity.⁷

⁷ *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 Rcd 6886 (released October 16, 1992), para. 14 (citations omitted).

If an emerging technology provider needs an incumbent's frequency, the Commission encourages the parties to negotiate a voluntary relocation agreement. Should that fail, the emerging technology service provider could request involuntary relocation of the incumbent. However, in that case, the emerging technology service provider must guarantee payment of all relocation expenses, build the new microwave facilities at the relocation frequencies, and demonstrate that the new facilities are comparable to the old....⁸

Thus, while microwave relocation may be a substantial cost of doing business in order to gain access to desirable 2 GHz spectrum, in this situation the MSS Coalition has not justified that the costs involved warrant Commission reconsideration.

Band Sharing Issues. The MSS Coalition asserts that requiring MSS operators to pay relocation costs of FS licensees may cause some incumbents to demand reimbursement for relocation rather than to cooperate in efforts to share spectrum in the 2110-2130 MHz, 2160-2180 MHz and 2180-2200 MHz bands.⁹ The MSS Coalition has not proffered any proof which shows that the FS microwave community will reduce its commitment to find a technical means by which FS and MSS licensees can share spectrum. Its arguments in this regard are wholly speculative and are not grounds upon which the Commission should reverse its decision to require MSS operators to pay relocation costs of FS licensees.

International Issues. The MSS Coalition argues that imposition of relocation costs puts 2 GHz MSS operators in a less favorable competitive position vis a vis 1.6/2.4 GHz global MSS operators since they are licensed and did not have to pay relocation costs. The MSS Coalition further argues that imposition of relocation costs will send a

⁸ *Id.*, para 24.

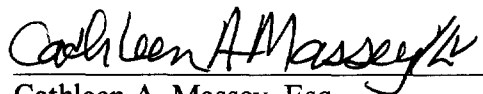
⁹ Petition, p. 30.

message to the international community that the U.S. satellite market is not an open market. Neither argument is supportable since they are both largely irrelevant to the issue of compensation for microwave relocation. The Commission has the authority and responsibility to manage its domestic spectrum. Indeed, in view of the fact that FS licensees are being required to move to new spectrum bands, it is a prerogative which the Commission properly exercised in adopting the Order. As a result, reconsideration on this basis is unwarranted.

Conclusion. For the foregoing reasons, AT&T Wireless Services, Inc. requests that the Commission deny that portion of the Petition of the MSS Coalition which seeks to overturn the Commission's decision requiring MSS operators to pay relocation costs of FS licensees.

Respectfully submitted,

AT&T Wireless Services, Inc.

A handwritten signature in black ink, appearing to read "Cathleen A. Massey".

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CERTIFICATE OF SERVICE

I, Lisa M. Volpe, hereby certify that on this 19th day of June 1997, copies of the foregoing "Opposition to Petition for Partial Reconsideration of the MSS Coalition," were sent by postage-paid first class mail to the following:

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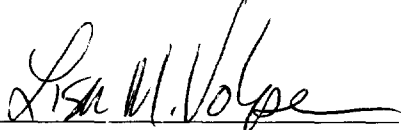
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